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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1956

No. ~~976~~ 116

DOUGLAS McCRARY and M. M. BRATTON, ET AL.,
*Petitioners,*

v.

ALADDIN RADIO INDUSTRIES, INC.,
and ALADDIN INDUSTRIES, INC.,
*Respondents.*

## MEMORANDUM OF RESPONDENTS IN ANSWER TO PETITION FOR WRITS OF CERTIORARI

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## MEMORANDUM OF RESPONDENTS IN ANSWER TO PETITION FOR WRITS OF CERTIORARI

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*To the Honorable, the Supreme Court of the United States:*

Come now the respondents in the above styled action and in reference to the Petition for a Writ of Certiorari recite, submit, and plead as follows:

## I. TECHNICAL HISTORY OF THE LITIGATION

The two suits in respect to which the petitioners are here asking a writ of certiorari are ancillary in character. In the principal actions, from which these ancillary suits derive, the respondents have secured preliminary and are now seeking permanent, injunctions from the Chancery Court of Davidson County, Tennessee. In the preliminary mandate the Chancellor ordered a number of truck companies as common carriers to pick up and deliver freight in their customary manner and without discrimination at the plant of the two respondents. In the ancillary proceedings citations for contempt were issued against a number of common carriers, a number of truck drivers employed by them, and other parties. After a series of hearings, the citations were dismissed against the common carriers and sentences for contempt were imposed upon eighteen truck drivers. Like sentences were imposed upon Teamsters Local No. 327 and its president for conduct designed to prevent compliance with the Court's decree.

Appeals from the Chancellor's judgments were taken to the Court of Appeals, Middle Section, State of Tennessee. In an elaborate opinion which comprehended findings of fact and conclusions of law the Court of Appeals affirmed the judgments of the Chancellor and upheld the sentences for contempt. Writs of certiorari were then sought from the Supreme Court of Tennessee and were denied. The persons adjudged in contempt now seek from the Supreme Court of the United States a writ of certiorari and ask it to review the two ancillary suits.

## II. THE ISSUE AND THE POSITIONS OF THE PARTIES

At the outset let it be understood that this case,[1] is not of a kind with, and does not stand in the line of, *Anheuser-Busch*, *General Drivers*, and *Kerrigan*.[2]

The line of cleavage between this and the *Kerrigan* case, which is the latest of the three cases and typical of them all, will be spelled out in detail in the recitation which follows. For the present it is sufficient to point out that in the *Kerrigan* case the question involved was the validity of an injunction against a labor union, whereas in the instant case the dominant —and in fact the only real—issue is the validity of judgments for contempt imposed separately upon some eighteen truck drivers and upon a local union and its president for conduct designed to prevent compliance with the mandate of the Court.

In the *Kerrigan* case a state court had imposed prohibitions upon collective activities by a labor organization, thus invading an area which by Act of Congress had become the preemptive domain of a federal agency. This Court, therefore, struck down the injunction against the labor union because it was found to be void ab initio. To the contrary, in the instant case, the injunction was in strict accord with the law. It was sought and obtained against a number of defaulting motor truck companies and against persons in their employ who, by virtue of their

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[1] In this memorandum the two ancillary actions are referred to as "this case" or "this suit." The singular is justified because in no essential respect do the two actions differ.

[2] *Weber* v. *Anheuser-Busch*, 348 U. S. 468 (1955); *General Drivers* v. *American Tobacco Co.*, 348 U. S. 978 (1955); *Teamsters Union* v. *Kerrigan Iron Works, Inc.*, 77 Sup. Ct. 1055 (1957).

strategic positions, were able to effect or to prevent the resumption of common carriage in the customary and lawful manner. The mandate did not run against any labor union, its officers or members, and it did not impose any prohibition upon any collective activity of a union. Its one objective was to secure to the respondents in the customary manner and without discrimination the common carrier service to which, under the laws of the state, they were entitled. In its terms and in its administration there was strict adherence to this single purpose.

The contemnors in the instant case have not met the charge of contempt simply and directly. The individual contemnors have entered no denial of the acts and things done of which they are accused and have interposed no plea in defense to the charge that they have flouted the court and attempted to prevent compliance with the mandate. In their appeal to this Court they have ignored the issue of contempt and seek to excuse themselves upon the ground that they were engaged in collective activities under union auspices. The gist of their contention seems to be that the injunction, however valid it may be in respect to common carriage, cannot comprehend within its coverage employees of the motor truck companies who are members of a labor union. In the court below each of the contemnors pleaded that he had acted as an individual and that his course of conduct was not dictated or in any way affected by the Union. Now they argue that their conduct falls within the provisions of sections 7 and 8(b)(4) of the National Labor Relations Act[3] and, as such, is subject in the

[3] 49 Stat. 452 (1935), as amended 29 U. S. C. §§ 157, 158(b)(4) (1952).

first instance to the jurisdiction of the National Labor Relations Board.[4]

There is and can be no charge by the petitioners that they have not had their day in court, for, as this record, with its sheaf of documents, abundantly attests, they were given every opportunity to present their defenses in the court below. The pleas which they interposed have received protracted, penetrating, and conscientious consideration from a Court of Chancery, the Court of Appeals, and the Supreme Court of the State of Tennessee.

It is the position of the respondents that the injunction was properly issued and that the contemnors, like other officers and employees of common carriers, are subject to it. When they refused to obey the proper mandate of the court below, they subjected themselves to punishment for contempt, and they cannot now, by relying on issues not present in the original proceeding, escape the consequences of their wrongdoing.

## III. THE BACKGROUND OF THE CONTROVERSY

The respondents in this case are Aladdin Industries, Inc., and Aladdin Radio Industries, Inc.[5] Industries and Radio are affiliated but separate corporations, engaged in different businesses. Industries owns a

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[4] The National Labor Relations Act and the National Labor Relations Board are hereinafter often referred to as the Act and the Board respectively.

[5] In this memorandum these two companies will be referred to respectively as Industries and Radio. The petition for *certiorari* and its appendices will be referred to as (P. .....). Following the style of the petition, the record in the *Radio* case will be referred to as (R. .....) and that in the *Industries* case as (RA. .....).

manufacturing plant near Nashville, Tennessee, a part of which is leased to and occupied by Radio; the remainder is utilized by Industries. The two concerns use the same entrances to the plant. Each of the companies is both consignee and shipper of a large amount of freight in both interstate and intrastate commerce. As going concerns the two corporations are dependent upon access to common carriage, motor trucking being the most important mode utilized. Each company has separate employees represented by different locals of the United Steelworkers of America. Local 5003 represents the employees of Radio and Local 4802 those of Industries.

On January 24, 1955,[6] the collective bargaining contract between Local 5003 and Radio expired. On the next day the employees of Radio went on strike. Local 5003 placed and maintained pickets at the entrances to the plant. The employees of Industries, however, were not involved in any dispute with their employer and did not strike. It was only because of the irrelevant fact that the two companies had a common situs that any pickets were set about the premises of Industries. Its employees, although belonging to another local of the same union, recognized that Industries was itself not picketed and continued to cross the picket line in going to and coming from work.[7] In the weeks that followed, however, the common carrier service of both Radio and Industries became more and more irregular, though there was never any complete cessation. The failure

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[6] All dates referred to in this document fall within the calendar year 1955.

[7] P. 28.

of common carriage took many distinct forms. Some companies continued their regular service; some did not.

On February 8, Industries filed an injunction bill against seven of the several carriers which had been serving it.[8] On February 11, after a hearing, the Chancellor granted a preliminary injunction as prayed.[9] The defendants were enjoined "from failing or refusing to provide customary service to complainant under the legally established rates and rules applicable to such service."[10] After the issue of this injunction, the defendant carriers resumed their customary service to Industries, transporting shipments to and from its plant, and their employees crossed the Local 5003 picket line without incident. The mandate was obeyed and customary services were furnished to Industries until May 17 when again there were refusals to pick up and deliver.[11]

In the meantime, common carrier service to Radio had suffered a like but more severe interruption. On March 23, more than a month after Industries had obtained its injunction, Radio filed a petition against eleven common carriers by motor truck, seeking similar relief.[12] After notice and hearing such an injunction issued.[13]

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[8] RA. 11.

[9] RA. 23, P. 95.

[10] *Ibid.*

[11] P. 35-36.

[12] R. 7.

[13] R. 17, P. 80.

On April 8, Radio filed a petition in the Chancery Court for attachment for contempt against five named employees of the defendant carriers.[14] It alleged that each of them had been instructed by his carrier-employer to deliver a shipment to the complainant, Radio, and in refusing to do so was guilty of contempt for wilful disobedience of the decree. Similar petitions were lodged with the Chancery Court by Industries against a number of common carriers and some of their employees.[15]

In a number of rulings the Chancellor dismissed charges of contempt against the accused carriers on the ground that they had done all within their power to secure compliance.[16] All of them, however, remained subject to the preliminary injunction. The truck-driver employees of the common carriers severally pleaded that they had refused to cross the picket line because of fear of violence to themselves or to their families.[17] The Chancellor accepted their "confession" but rejected their "avoidance" because no evidence of violence, actual or threatened, was produced.[18] Accordingly, sentences of contempt for flouting the mandate of the Chancery Court were imposed.[19]

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[14] R. 21.

[15] The various petitions were filed between May 17 and June 20. The Chancellor dismissed several of the petitions *in toto;* he dismissed others as concerned certain defendants. Altogether 13 common-carrier employees were found guilty of contempt in the *Industries* case. See RA. 208, 210.

[16] RA. 210.

[17] For example, see RA. 150, 162, 174, R. 40.

[18] P. 29, 62.

[19] P. 62.

## IV. THE CLEAR CUT ISSUE OF CONTEMPT

In this ancillary case the single, simple, and direct issue is the power of a court in chancery to secure compliance with its mandates. In concrete terms the issue is whether the trial court below had authority to instrument its decree and to take whatever measures were necessary and proper to effect the objectives the mandate was designed to secure. For their validity, all secondary questions must relate to this dominant issue.

### 1. The Procedure in Chancery

The sentence for contempt in question here were not hastily or lightly imposed. It was only after a period of study, of gathering all facts and authorities, and of thoughtful consideration that the Chancellor issued the contempt decrees.

A number of pleas in defense were put forward by the employees of the common carriers cited for contempt. Among them was the belated contention that either the injunction was not valid or that it did not apply to employees who were members of a trade union. The Chancellor received this challenge as an open question and went so far as to suspend the injunction until he was able to satisfy himself as to his jurisdiction. On April 4, 1955, this Court handed down its decision in *General Drivers* v. *American Tobacco Co.*,[20] which was at once seized upon and capitalized by the employees cited for contempt. Although they were pleading individual conduct and the *General Drivers* decision related to activities collective in character,[21]

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[20] 348 U. S. 978 (1955), reversing the Court of Appeals of Kentucky, 264 S. W. 2d 250 (1954).

[21] See the petition for the injunction in the *General Drivers* case, found in the Transcript of Record of that case, October Term, 1954, No. 186, p. 1.

the employees cited for contempt sought the benefit of its coverage. On May 27, the Chancellor dismissed all petitions for contempt which had reference to conduct during the period the injunction was suspended.[22] He announced that he had jurisdiction and that in the future the injunctions theretofore issued would be strictly enforced.

He also stated that he would not require a union member to cross his own picket line. On June 10 he reduced this oral ruling to a written order; imposed upon it the necessary limitations and held,

> [T]he Court will not compel a member of a Union, which is the duly authorized collective bargaining representative of the complainant's employees, to cross a picket line established at the complainant's plant by said bargaining representative and advertising a lawful strike against the complainant.[23]

**2. The Case of the Eighteen Individual Contemnors**

In seeking the injunctions Radio and Industries stood upon their ancient and established right to common carriage. They grounded their demands upon the common law and the statutes of the state. In accordance with Tennessee law and practice the injunction ran against the common carriers, "their officers, agents, employees . . . and/or confederates."[24] It applied to

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[22] R. 108. P. 60. It is to be noted that none of the acts for which the Petitioners in this case were sentenced for contempt were committed during the period in which the injunction was suspended. They were either before or after that period.

[23] P. 60.

[24] P. 95. The language in the *Radio* injunction is "their officers, agents, employees and all persons acting for or in concert with them." P. 80.

persons connected with the companies who were in a position to affect or to prevent the resumption of common carriage. No injunction was sought against any labor union or any member thereof and there was no allegation of collective activity or of unfair practice. The mandate issued contained no prohibition upon the right of workers to promote organization, to bargain collectively, or to engage in any other lawful activity. It was the resumption of pick up and delivery by defaulting carriers, and that alone, which Radio and Industries sought to secure.

All of the employees of the common carriers cited for contempt filed answers. In these answers, many of which were returned under oath, each of the cited employees insisted that he and he alone had made the judgment that he would not cross the picket line. Each made the additional statement that no orders to or pressure upon him had come from his union.[25] The testimony of these employees at the hearing, necessarily under oath, was to the same effect.[26] A like statement

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[25] P. 29, 37. See for example, RA. 154, 162, 174, R. 40. The following excerpt from a sworn answer is typical:

> [R]espondents would show that each and every one of them makes his own decision with reference to driving his vehicle, deny that the Local, its officers, or any of the other employees advise or determine when they should or should not cross a picket line or drive in any other locality and deny that it is within the power of the Local Union, the International Union or its officers, as to when they should cross a picket line.

RA. 163.

[26] Typical examples of such testimony are the following. Edward Smith, Treasurer of Local 327:

Q. Does the Local have anything to do about whether or not any

was made in an answer filed by Don Vestal, president, and the other ranking officials of Teamsters Local No. 327. They stated to the court:

> Your respondents deny that the executive officers of Local Union 327 decide whether or not a member of said Local shall respect a picket line, but would show to the Court, that this is a matter left to be decided by the individual member of the Union. Your respondents, as individuals and officers of Local Union 327, have not nor has anyone within their knowledge who is connected with the Union, notified any one of its members to fail or refrain from obeying any orders of this Honorable Court.[27]

Thus the allegations in the pleadings, the orders of the Court, and the testimony of the contemnors are uniformly to the effect that the accused conduct is that of individuals and not of members of a trade union engaged in collective activity.

### 3. The Pretense of Union Activity

A single lapse from this contention of individual responsibility marks the conduct of the petitioners. Acting upon the suggestion of the Chancellor that he would

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individual crosses or does not cross the picket line, Mr. Smith?
A. We never have.

RA. 543. M. M. Bratton:

Q. Had you been informed by any of the officers of the Teamsters Local to cross or not to cross the picket line, Mr. Bratton?
A. No, sir.
Q. Any decision you make, is that your own decision?
A. That is up to me, to the individual.

RA. 591. See also RA. 564, 588, 615-16.

[27] RA. 128.

not require a member of a union to cross his own picket line, on June 1 Don Vestal, president of Local 327, set up a single picket sign at the vehicular entrance to Industries' plant. This sign, although ordered by Vestal and paid for out of the petty cash fund of the Local, was not authorized by the Union.[28] This solo picket sign bore in large letters which could be read easily at a distance of fifty feet the legend: "Teamsters Union No. 327." Upon it was pasted a message, in ordinary type, inviting the office workers of the plant to join the Teamsters Union. This invitation was "in type so small that it could not be seen or read while the placard was being carried by the picket."[29] Vestal was acting *ultra vires* since he had no authority to attempt to organize the office workers; on the contrary it was provided in the Union's constitution that they could be organized only in connection with teamsters, chauffeurs, warehousemen, and helpers.[30] The transcript contains not one word of testimony to the effect that a single office worker was ever approached and asked to join the Union.[31] On June 17 the picket sign was withdrawn and three days later Vestal made the statement referred to above, that each of the cited employees had acted as an individual and not under Union auspices.

The placing of the sign led to the citation of Don Vestal and Local 327 for contempt. At a hearing on June 20 the Chancellor found—and the Court of Appeals later concurred—that this alleged picketing by

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[28] P. 68.

[29] P. 56.

[30] RA. 476-77. The Union constitution was stipulated.

[31] P. 57.

Local 327 "was neither bona fide nor for a lawful purpose, but was done *solely* for the purpose of attempting to prevent the complainant from receiving common carrier service which this court had decreed it was entitled to receive."[32]

In all, contempt proceedings were instituted against some eighteen truck drivers together with Vestal and the Union. The Court of Appeals, Middle Section, unanimously affirmed the trial court. The Supreme Court of Tennessee declined writs of certiorari. As a last resort the contemnors now seek a writ of certiorari from the Supreme Court of the United States.

#### 4. The Established Power of Chancery Over Contempt

The sentences for contempt were imposed for a violation of a preliminary, not a permanent, injunction. It is established law that while the question of the issue of an injunction is pending the Chancellor has the responsibility for maintaining the status quo. To that end it is his duty to take such measures as may be necessary to insure compliance with his decree. It is likewise the duty of all persons subject to the mandate to obey until the injunction has been set aside by proper judicial process.

In *United States* v. *United Mine Workers*,[33] it was held that a decree of a court, whether correct or erroneous, must be respected until set aside or amended through proper judicial procedure. Even if a court lacks jurisdiction to enter an order, an aggrieved party must assert its challenge by taking the steps which are necessary and proper to secure reversal. It must not,

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[32] P. 68. (Emphasis added.)

[33] 330 U. S. 258 (1947).

by flouting the court and its decree, invite a sentence for contempt as the device for testing jurisdiction. In *Carter* v. *United States*,[34] made canonical by its quotation with approval in the *United Mine Workers* case, it is stated:

> It cannot now be broadly asserted that a judgment is always a nullity if jurisdiction of some sort or other is wanting. It is now held that, except in case of plain usurpation, a court has jurisdiction to determine its own jurisdiction, and if it be contested and on due hearing it is upheld, the decision unreversed binds the parties as a thing adjudged. Treines v. Sunshine Mining Co., 308 U. S. 66 . . . Sunshine Anthracite Coal Co. v. Adkins, 310 U. S. 381, 403 . . . Stoll v. Gottlieb, 305 U. S. 165 . . . .[35]

It is not and cannot be claimed that the injunction is void *in toto*. It would be a nullity, however, if the Court did not have power to secure compliance from those who were in a position to effect or to defeat compliance with its terms. In Tennessee law its coverage extends to employees and to confederates who

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[34] 135 F. 2d 858 (5th Cir. 1943).

[35] 135 F. 2d at 861, cited in 330 U. S. at 292, n. 57. The Tennessee Supreme Court has recognized the same principle in *Nashville Corp.* v. *United Steelworkers*, 187 Tenn. 444, 450, 215 S. W. 2d 818, 821 (1948):

> The mandates of a Court of Chancery must in all cases be obeyed, according to the spirit of the decree, promptly, faithfully and without question, or evasion. The party, upon whom the order or command of the court operates, is not allowed to speculate upon the equity of the bill, or the legality or regularity of the order or decree, or of the writ issued thereon; but his simple duty is to obey; and when he disobeys it is a a duty the court owes to itself and to the public to punish him at once.

hold such strategic positions. If the Congress in its regulation of labor relations had intended to abridge or deny powers of equity which are traditional and established, the Congress had language with which to say so. As this Court observed in *Amalgamated Clothing Workers* v. *Richman Bros. Co.*,

> We are further admonished against taking the liberty of interpolation when Congress clearly left no room for it, by the inadmissibility of the assumption that ascertainment of pre-emption under the Taft-Hartley Act is self-determining or even easy. As we have noted in the Weber case, "the areas that have been pre-empted by federal authority and thereby withdrawn from state power are not susceptible of delimitation by fixed metes and bounds." 348 U. S., at 480. What is within exclusive federal authority may first have to be determined by this Court to be so.[36]

The law and the facts give no basis for any charge that the Chancellor was here guilty of "plain usurpation." There was, therefore, an affirmative duty of obedience until the injunction was set aside by judicial process. Membership in a union is not such a shield as to relieve persons of their obligations as employees or of their responsibilities as citizens.

Nor can immunity from the preliminary injunction be claimed by Don Vestal and Local 327. It may be that viewed in isolation the placing of a sham picket sign is an unfair labor practice and that, as such, jurisdiction in the first instance rests with the Board. It is an axiom of the law, however, that a course of acts and things done is to be viewed, not in isolation, but in its context. The thrust of Vestal here was not at an em-

[36] 348 U. S. 511, 516 (1955).

ployer, but at the Court itself. The Chancery Court found as a fact—and the Court of Appeals concurred—that the act in question was neither prompted by the intent nor justified by the effect, of organizing the office workers. It ruled that the purpose was to flout the Court and to hinder compliance with its decrees. If a truck driver or his union were to offer a bribe to a carrier not to pick up or deliver, or to threaten the family of a carrier official, with the purpose of preventing compliance with the court mandate, there would be no doubt of liability for the unlawful act. Membership in a union is not an immunity to the general law. Federal legislation aimed at giving freedom to workers to act in concert in their quest of a better standard of life is not to be read as granting to them a general indulgence in wrongdoing.

### 5. The Dilemma of the Contemnors

There are here two—and only two—possible interpretations of the conduct now under review. All of the Petitioners insisted in the Court below that their actions were individually motivated and in no wise controlled by the Union. There was no challenge to these statements by the Chancellor or by any party in interest. In the face of this testimony it can not, in the words of the *Anheuser-Busch* case, be "reasonably deemed"[37] that there is here collective activity under Union auspices. The only alternative is that, in pursuit of some objective which the transcript does not reveal, they were not telling the truth. In that instance they came into a court of equity with unclean hands and lacked standing to challenge the orders given in Chancery.

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[37] 348 U. S. 468, 481 (1955).

## V. THE PETITIONERS' QUEST OF ANOTHER FORUM

For want of a valid plea against contempt, the contemnors are forced to look for an issue back of the line. They put forward the argument not that their conduct has been circumspect but that in issuing the preliminary injunction the Court lacked jurisdiction over the subject matter. To that end they insist in sections one through four of their brief that exclusive jurisdiction in the first instance rests with the National Labor Relations Board and in section five that, inasmuch as it concerns common carriage, it is lodged in the Interstate Commerce Commission.

### 1. Petitioners' Lack of Relevant Authority

Instead of placing the issues here in their larger context, the contemnors seek to employ the stock device of insisting that decision in their favor is compelled by the authority of specific cases. If cases can not be found which are four-square with the instant action, then the instant action is to be made over to fit the cases. They seek by bold and subtle touches to convert the case which was tried in the Court below into the kind of action which will serve their purpose. The paragraphs which follow will attest the tailoring to order which shapes the petition now presented to this Court.

In a footnote the Petitioners have likened the then pending case of *Teamsters Union* v. *Kerrigan Iron Works, Inc.*,[38] to the current action. The decision of this Court reversing the court below will, if their petition for certiorari is granted, doubtless become their dominant defense. The differences, however, between the two cases are fundamental, not formal.

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[38] 77 Sup. Ct. 1055 (1957).

In the *Kerrigan* case an injunction was sought and obtained. It was aimed directly at Teamsters Local 327 and its total membership. Its coverage extended to members of the Local who were in the employ of common carriers not serving the Kerrigan Iron Works. Its charge was that "Local No. 327 and its members . . . have by concerted action . . . coerced and induced . . . carriers to fail and refuse to serve" Kerrigan, and that the "concerted action . . . is in law an unlawful conspiracy and constitutes an illegal boycott, the purpose of such concerted action" being to "force complainant to accede to the terms demanded by the other union . . . ."[39]

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[39] The following excerpt from the bill in the *Kerrigan* case is of interest:

> This complainant is advised and further alleges that the defendant Local No. 327 and its members, many of whom are employees of other motor freight carriers, have by concerted action among themselves coerced and induced such other carriers, in addition to the defendant carriers, and will continue to coerce and induce them by threats of work stoppages and other concerted action to fail and refuse to serve complainant. Complainant has been advised by other carriers in addition to those named as defendants herein, that as a result of the concerted action on the part of the defendant Local No. 327 and its officers, agents and members in refusing to permit service to complainant they will not handle freight consigned to or from the complainant so long as a picket line exists at complainant's plants. In this connection complainant avers that it presently has several actions pending in the Circuit Courts of Davidson County wherein it has been forced to resort to replevin warrants in order to obtain freight consigned and belonging to complainant and illegally held from it by another or other carriers.
>
> Complainant alleges that the combined and concerted action among members of the defendant Local No. 327 and by said members and the carriers which employ them, including defendants is in law an unlaw [*sic*] conspiracy and constitutes an illegal boycott, the purpose of such concerted action being

In the instant case no writ has been sought against the Union or any of its members and no mandate has been asked against any activity of a labor union. The preliminary injunction runs only against common carriers and those who are in such strategic positions as to insure or to forbid compliance with the Court's orders. The mandate covers individuals only as employees of common carriers and not as members of labor organizations. It applies only to such truck drivers as serve the plants of Industries and Radio, and to them only so long as they are in the employ of common carriers; only in the course of their employment; and only when in rendering common carriage service to others they withhold it from Industries and Radio and thus discriminate between persons who by law are ac-

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to deprive complainant of public carrier service and to thereby force complainant to accede to the terms demanded by the other union conducting a picket line at complainant's plants which complainant had no legal obligation to do.

Transcript of Record, October Term, 1956, No. 818, p. 15. The fundamental differences between *Kerrigan* and the instant case, as concerns the jurisdictional question, can be readily seen by comparing the above with the original bills in the instant case. They are printed in the Appendix to this memorandum and by reference are made a part of it. It is also of value to compare the injunctions granted in the instant case, P. 80, 95, with the following excerpt from the *Kerrigan* injunction decree:

> [I]t is accordingly ordered . . . that . . . a temporary injunction [shall be issued] enjoining the defendants . . .
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> . . . .
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> 2. From coercing or inducing by threats or otherwise the defendant Cook Truck Lines, Inc., or the defendant Hoover Motor Express Co., Inc., or their employees, or any other common carrier or its employees, to fail or refuse or cease to furnish carier service to or from complainant or its places of business; and from hindering or interfering in any manner with the rendition of carrier service to or from complainant or its places of business.

corded equality of access to pick-up and delivery. In the instant case there is no charge of concerted action and no evidence of collective activity. The testimony is all to the effect that each of the contemnors acted as individuals and not as members of a union.

The question in the *Kerrigan* case was the validity of a permanent injunction against a labor union charged with a secondary boycott. In the instant case the concern is with sentences for contempt imposed upon individuals for actions designed to prevent compliance with a preliminary injunction directed against common carriers.

There is in the record of the *Kerrigan* case no testimony that the truck drivers were acting as individuals. The complaint, the mandate, and the record make it clear that the *Kerrigan* case falls clearly within the provisions of section 8(b)(4) of the National Labor Relations Act and that jurisdiction over it rested in the first instance with the National Labor Relations Board.[40]

The two additional cases which are the main reliance of the Petitioners are *General Drivers* v. *American Tobacco Co.*[41] and *Weber* v. *Anheuser-Busch*,[42] on the authority of which in a *per curiam* decision the *Kerrigan* case was decided. This Court was without question right in basing its decision in the *Kerrigan* case upon these two cases, for the three cases are quite alike in the factual situations presented and in the applicable law. All three present instances of collective activity

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[40] For a discussion of the relevant provisions of the Act see subsections 2 and 3, *infra*.

[41] 348 U. S. 978 (1955).

[42] 348 U. S. 468 (1955).

under the aegis of labor unions. They all fall squarely within the orbit preempted for the Board by the Act. All three of these cases are concerned with the collective activity of unions; the instant case is not. No one of the three is concerned with the power of a court of equity to instrument and to secure compliance with its decree. That is the dominant question in the instant case.

### 2. No Protection Under Section 7

It seems clear from the foregoing that the contentions of the Petitioners are disposed of in the discussion of contempt. If so, the questions of the jurisdictions of the Chancery Court and of its power to instrument its own mandate are not reached. But, even if that issue is still regarded as open, a short excursion into the relevant provisions of the Act and into the cases in which it has been applied will show that the instant case lies outside any area reserved to the Board. A presumption underlying the whole petition is that the Board has exclusive jurisdiction as broad as the domain of labor relations. To the Board, as to other administrative agencies, has been delegated enumerated powers to be exercised in appointed ways subject to specific limitations. By section 303 of the Act [43] a suit for damages by a person injured in his property or business by an unfair practice may be brought in a federal district court or in any other court having jurisdiction of the parties. Thus, not only is a role in labor relations assigned to the judiciary, but the federal and the state courts are endowed with concurrent jurisdiction. The case law in specific terms recognizes the existence of a domain in labor

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[43] 61 Stat. 158 (1947), 29 U. S. C. § 187 (1952).

relations within which the state has authority."[44] Thus it is clear that, as this Court has put it, the Act "leaves much to the States."[45]

In the *Anheuser-Busch* case this Court has laid down three criteria for the assertion of exclusive primary jurisdiction by the Board:

> [W]here the moving party itself alleges unfair labor practices, where the facts reasonably bring the controversy within the sections prohibiting these practices, and where the conduct, if not prohibited by the federal Act, may be reasonably deemed to come within the protection afforded by that Act, the state court must decline jurisdiction in deference to the tribunal which Congress has selected for determining such issues in the first instance.[46]

The coverage of this preemptive domain rests upon the statutory provisions of sections 7[47] and 8[48] of the Act. The language in section 7 is to be read not as an isolated collocation of words but in terms of its history and its objective. In the not distant past a concert of action by employees to improve their situation was subject to the hazard of the old conspiracy laws. Courts, federal and state, obtruded into labor

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[44] *United Constr. Workers* v. *Laburnum Constr. Corp.*, 347 U. S. 656 (1954); *Algoma Plywood & Veneer Co.* v. *Wisconsin Employment Relations Bd.*, 336 U. S. 301 (1949); *International Union UAW, AFL* v. *Wisconsin Employment Relations Bd.*, 336 U. S. 245 (1949); *Allen-Bradley Local* v. *Wisconsin Employment Relations Bd.*, 315 U. S. 740 (1942).

[45] *Garner* v. *Teamsters Union, AFL*, 346 U. S. 485, 488 (1953).

[46] 348 U. S. at 481.

[47] 49 Stat. 452 (1935), as amended, 29 U. S. C. § 157 (1952).

[48] 49 Stat. 452 (1935), as amended, 29 U. S. C. § 158 (1952).

disputes to tilt the balance against workingmen or even to break strikes. The practice is illustrated in the classic case of *Hitchman Coal & Coke Co.* v. *Mitchell.*[49] As a remedy the Congress, through the Norris-LaGuardia,[50] the Wagner,[51] and the Taft-Hartley[52] Acts, has accorded protection to workingmen acting in concert and has imposed severe limitations upon the labor injunction. The logic of this legislation was anticipated years before in an opinion of Mr. Justice Holmes in *Coppage* v. *Kansas.* A sentence—then in dissent, now in authority—sets it down as the establishment of "equality of position between the parties in which freedom of contract begins."[53] But to establish equality in position is not to create privilege or to depart from equal protection. A liberation of labor unions from the outworn taboo of conspiracy is not to be read as immunity from the general law.

In strict accord with its function, section 7 of the Act confers protection upon a number of specific labor practices which serve as instruments to the collective activity through which a betterment of working conditions and an advance of the standards of life are sought. It grants to employees the right to organize themselves, to form, join, or assist labor organizations, and "to bargain collectively through representatives of their own choosing." An absolute right of a union or of its members to refuse to cross a picket line is not here set down in explicit terms. It must be found, if it

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[49] 245 U. S. 229 (1917).

[50] 47 Stat. 70 (1932), as amended, 29 U. S. C. §§ 101-15 (1952).

[51] 49 Stat. 449 (1935), as amended, 29 U. S. C. §§ 151-67 (1952).

[52] 61 Stat. 136 (1947), 29 U. S. C. §§ 141-88 (1952).

[53] 236 U. S. 1, 27 (1915).

is found at all, within the omnibus clause which reads, "to engage in other concerted activity." But such engagement is sanctioned only if it is done with the purpose of "collective bargaining or other mutual aid or protection."

In its opinions this Court has set down a commentary which underlines the purpose of this grant of protection. In *International Union, UAW, AFL* v. *Wisconsin Employment Relations Bd.*, this Court has said,

> In the light of labor movement history, the purpose of . . . [section 7] becomes clear. The most effective legal weapon against the struggling labor union was the doctrine that concerted activities were conspiracies, and for that reason illegal. Section 7 . . . took this conspiracy weapon away from the employer in employment relations which affect interstate commerce. No longer can any state, as to relations within reach of the Act, treat otherwise lawful activities to aid unionization as an illegal conspiracy merely because they are undertaken by many persons acting in concert.[54]

The Court recognizes that the protection granted is strictly limited to its function. As the Court puts it, "because legal conduct may not be made illegal by concert, it does not mean that otherwise illegal action is made legal by concert."[55] In this connection the Court recalls the report of the House Committee on Conference which shaped this provision. There it is clearly stated that under section 7 "employees are not given any right to engage in unlawful or other improper conduct."[56]

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[54] 336 U. S. 245, 257-58 (1949).

[55] *Ibid.*

[56] *Id.* at 260.

A case directly in point is *NLRB* v. *Illinois Bell Telephone Co.* It is the only decision in which a court has discussed the issue presented here. The Court held squarely that a refusal by individuals to cross a picket line of another union is not activity protected by section 7 of the Act. This Court denied certiorari.[57]

The conduct here in question, set in its context, presents a wilful and deliberate attempt to prevent compliance with the mandate of the Court of Chancery. The "unlawful" and "improper" course of conduct here in question is not to be saved by section 7.[58]

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[57] 189 F. 2d 124 (7th Cir. 1951), *cert. denied*, 342 U.S. 885 (1951). The Court, at 127, 129, said:

> There is no evidence that these eight employees acted in combination or concert. They did not converse with each other or any other person regarding the activity in which they engaged, that is, a refusal to cross the picket line. The record discloses unmistakably that each acted in her own individual capacity.
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> . . . .
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> . . . . We think it is a novel theory that the mere refusal to cross a picket line . . . makes the one who refuses a party to the strike, but even so, . . . such refusal was not for the "mutual aid or protection" of the employees involved. It could have only been for the benefit and aid of those in a different bargaining unit, the representative of which . . . could have obtained nothing from respondent for their benefit.

[58] The Petitioners also claim that their conduct is protected by a proviso in § 8(b)(4) reading, "nothing contained in this subsection shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged" in a lawful strike. A simple reading of this proviso fails to divulge a congressional intent to make it an absolute right to refuse to cross a picket line. Congressional methods would be devious indeed if such a negative statement is to be used to establish such an all pervading right. But Congress has used this form of proviso on other occasions without intending to create a positive right. For example, in § 13 of this very Act Congress stated that "nothing in this subchapter . . . shall be con-

### 3. No Protection Under Section 8(b)(4).[39]

A second shield with which the Petitioners attempt to ward off the charges of contempt is section 8(b)(4). By this provision Congress has recognized a category of unfair labor practices, the adjudication of which in the first instance is entrusted to the Board. Here, Congress, has declared it to be unfair

> for a labor organization or its agents—
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> . . . .
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> . . . . to engage in, or to induce or encourage the employees of any employer to engage in a strike or a concerted refusal in the course of their employment to . . . transport or otherwise handle . . . any goods . . . .

This section seems irrelevant to the present controversy; but, even if the question of its applicability has to be considered, a reading of the statute shows that certain prerequisites are essential to its invocation. The one is that only "a labor organization or its agents" can be guilty of an 8(b)(4) unfair prac-

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strued so as . . . to interfere with . . . the right to strike . . ." 29 U. S. C. § 163 (1952). This Court has held:

> Unless we read into § 13 words which Congress omitted and a sense which Congress showed no intention of including, all that this proviso does is to declare a rule of interpretation for the Act itself which would prevent any use of what originally was a novel piece of legislation to qualify or impede whatever right to strike exists under other law.
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> . . . .
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> . . . . What other Acts or other State Laws might do is not attempted to be regulated by this section.

*International Union, UAW, AFL* v. *Wisconsin Employment Relations Bd.*, 336 U. S. 245, 258-59, 263-64 (1949).

[39] This subsection is the only part of § 8 that is relevant to the instant controversy. It is the only part of § 8 on which Petitioners rely.

tice. Congress did not place acts of individuals in this category, no matter what those acts might be. The plain and literal meaning of these words has been underwritten by numerous opinions of the courts. In *Local 74, United Brotherhood of Carpenters, AFL* v. *NLRB*,[60] this Court, speaking through Mr. Justice Burton, held that "the statute did not require the individual carpenters to remain on this job. It did, however, make it an unfair labor practice for the union or its agents to engage in" action prohibiited by 8(b)(4).[61] Mr. Justice Burton, again speaking for this Court in *NLRB* v. *Denver Bldg. & Constr. Trades Council*, made the same point, section 8(b)(4) "resists a labor organization."[62] He also quoted from the House of Representatives Conference Report that under this section "it was made an unfair labor practice for a *union* to engage" in prohibited activity.[63]

Another requisite of a section 8(b)(4) violation is concerted activity. The statute itself, in specific terms, provides that the labor organization must have engaged in or induced or encouraged employees to engage in "a strike or a concerted refusal."[64] Again the plain meaning of the statute is confirmed by case law. A single citation tells all that need be said. In *NLRB* v. *International Rice Milling Co.* this Court stated, "the applicable proscriptions of section 8(b)(4) are expressly limited to the inducement . . . of *concerted* conduct by

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[60] 341 U. S. 707 (1951).

[61] *Id.* at 713.

[62] 341 U. S. 675, 687 (1951).

[63] H. R. Rep. No. 510, 80th Cong. 1st Sess. 43, quoted in 341 U. S. at 687. (Emphasis added.)

[64] It is alleged by no one and no facts here reasonably indicate that the Petitioners have been on strike.

the employees of the neutral employer."[65] This case has come to be generally accepted as authoritative in this field and has been widely cited in the lower federal courts.[66]

Although the area preempted by the Board in section 8(b)(4) has not been marked out by "metes and bounds," it is evident that the conduct here in question falls far outside its ultimate limits. The respondents have alleged no collective activity, fair or unfair, or actions by a labor organization or its agents. The Petitioners have denied acting in concert. No court has found anything to the contrary.

#### 4. Invocation of the Interstate Commerce Commission

A variation of Petitioners' quest for another exclusive forum demands only a postscript to this section. In their search for a jurisdiction other than the Court of Chancery they adhere to federal administration, but attempt to replace the Board with the Interstate Commerce Commission. This contention has been disposed of by this Court in the classic case of *Louisville & N. R. R.* v. *F. W. Cook Brewing Co.*[67] Section 1(17) of the Interstate Commerce Act is also in point. It reads that "nothing in this chapter shall impair or affect the right of a State, in the exercise of its police power, to

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[65] 341 U. S. 665, 670-71 (1951). (Emphasis by the Court.)

[66] *Joliet Contractors' Ass'n* v. *NLRB*, 202 F. 2d 606 (7th Cir. 1953); *United Brick Workers* v. *Deena Artware, Inc.*, 198 F. 2d 637 (6th Cir. 1952); *NLRB* v. *Denver Bldg. & Const. Trades Council*, 193 F. 2d 421, 424, 425 (10th Cir. 1952); *DiGiorgio Fruit Corp.* v. *NLRB*, 191 F. 2d 642 (D. C. Cir. 1951); *NLRB* v. *Service Trade Chauffeurs*, 191 F. 2d 65 (2d Cir. 1951).

[67] 223 U. S. 70 (1912). See also *Minneapolis & St. L. Ry.* v. *Pacific Gamble Robinson and Co.*, 215 F. 2d 126 (8th Cir., 1954).

require just and reasonable freight and passenger service for intrastate business . . . ."[68]

In our economy intra and interstate commerce are closely interwoven and the law has recognized that the concurrent jurisdiction of the federal and state government is of course limited by the Supremacy Clause of the Constitution.

## VI. THE DEMANDS OF PUBLIC POLICY

The instant case is not a mere controversy between private parties. In a number of ways worthy of mention it is concerned with public policy.

### 1. The Obscure Motives

The motivation of the Petitioners in the course of conduct here reviewed is obscure. It is the more perplexing because of a shift of position in the presentation of their defense. In the lower court their strategy was predicated upon individual conduct on the part of each of them. In their appeal to this Court they invoke sections of the Act which are concerned with the validity of collective activity.

But, even if motives are obscure, the malady in the petition invites easy diagnosis. The strategy of the Petitioners has been to divert attention from the questions of contempt and of common carriage to a fictitious concern with unfair labor practices. The remaking of the cause of action to secure strategic advantages is of a kind with the setting up of the sham picket to effect an escape from the charge of contempt. In this myopic concern to bring the instant case under the coverage of established holdings, the Petitioners have overlooked fundamentals of the law.

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[68] 24 Stat. 379 (1887), as amended, 49 U. S. C. § 1(17) (1952).

### 2. Limits of Private Contract

The Petitioners contend that their refusal to cross a picket line is justified by a provision in their collective contract with their common-carrier employers. Such a contention is contrary to the dictates alike of law and of morals. It is elementary that a contract binds only the parties who are privy to it; that persons entering into agreement cannot bargain away the rights of a third party. The law holds no such concept as third-party maleficiary. And, it would seem to need no argument that a private contract, whatever its terms, will not excuse its parties from the performance of mandatory public duties. In the terms of the mandate, whether an employee was or was not a member of a union or of what union is irrelevant. The compulsion upon him was in his capacity as agent or employee of a truck company engaged in common carriage. It would be absurd to say that a fireman can refuse to cross a picket line to put out a blaze, or a policeman to stop a burglary. There would be chaos if employees of a public utility company were allowed to arrest the flow of gas or power or to stop telephone service because a labor dispute had caused a picket line to be thrown around the building occupied by its customers. An injunction upon a hotel to admit a Negro is not to be thwarted by the steps taken by the hotel employees, acting as individuals or in concert, to exclude the guest. A common carrier, through its officers, agents, and employees, has the same type of public duty. An even stronger obligation rests on persons in the same circumstances who are subject to a court decree.

### 3. Police Power

From time immemorial the dominant responsibility for the maintenance of law and order has devolved

upon the several states. It is the state, not the federal government, which in the first instance is looked to for the suppression of force and fraud. The maintenance of peace and order under which a society, a community, an economy carry on their ordinary activities, involves preventive as well as corrective measures. In the discharge of this obligation, the state is not limited to the use of force. It is its duty and its practice to formulate public policies for the advancement of its agriculture, industry, and commerce. The creation of a "state economy"—a term which often appears in the United States Reports—as an instrument for the advance of the standard of life is recognized as among the foremost of its functions. This general power, whether exercised through the police or by policy, has never been surrendered by the states to the federal government.

#### 4. Access to Common Carriage

In an economy established upon the land, access to the highway came to be a right of first importance. If a man owned a tract of real property completely surrounded by holdings of others, the common law gave him an easement which secured to him access to and egress from his own property. In an economy based upon commerce, a person, natural or corporate, must have access to common carriage if he is to carry on. From the days when the term first entered the language it has been a principle of the law that common carriage shall be available to all, free from discrimination in service and in charges. The thrust of our earlier statutes on the subject was at discrimination, and when by the passage of the original Interstate Commerce Act the federal government entered this field its initial task was not the fixing of a level of rates but the prevention of discrimination. As a result, there has been taken

from the common carriers the power to play favorites for whatever cause or without cause between persons who require their services. The constitutional guarantee of "equal protection" has been given expression in federal and state law. It forbids common carriers to play favorites among their customers.

In the instant case Industries and Radio had recourse to the state court to secure to themselves the access to pick-up and delivery which was available to all shippers and consignees on equivalent terms. In this matter the carriers had no discretion and the injunction was sought to fortify their common-law and statutory duties with a mandate from the state court.

The Congress and the state legislatures have taken from the common carriers the right to choose their own customers or to discriminate between them in services or in charges. It has not lodged so vast a power to play favorites or to decree success or failure in the hands of any private group of persons whether they act as individuals or in concert.

### 5. The Question of Due Process

The contention of the Petitioners, if it succeeds, would abridge or deny to Industries and Radio their access to common carriage. On the one hand, their appeal to the Chancellor for an injunction to effect the resumption of customary common carriage service would end in a nullity. On the other hand, an appeal by them to the Board for a cease and desist order against the employees who prevented compliance with the court mandate would have no chance of success. Against the facts of this case, as recited above, the requisites of union participation and collective activity could not be met. The right provided by Tennessee

law would be abridged or denied and no effective federal remedy put in its place. The law, like nature, abhors a vacuum, and here if anywhere there is place for the wise admonition of Mr. Justice Jackson in *Garner* v. *Teamsters Union,*[69] that either it is governed by state law or it is left ungoverned. A denial or discrimination in access to common carriage is clearly a taking of property. If sections 7 and 8(b)(4) of the Act are to be interpreted as an abridgement or withdrawal of the states' power to compel access to common carriage, a question of due process is definitely posed.

**6. Power Without Responsibility**

The contemnors, even if acting as individuals, have usurped a public function and imposed a ban upon the service of common carriers to Industries and Radio. In whatever capacity they have acted they have arrogated to themselves the power to sit in judgment on strikes and at their pleasure to keep the balance even or to tilt it against the employer. The outcome of labor disputes may thus be made to turn upon whether or not the Petitioners permit pickup and delivery. It is contrary to our system of law and our ideas of justice to lodge a power of this kind in private hands. It is the more intolerable when that power is exercised by a number of individuals who hold a dominant position in transportation, a service essential to the operation of the economy. As long ago as 1877, Mr. Chief Justice Waite in the classic case of *Munn* v. *Illinois,* pointed to the danger inherent in the strategic position of those who stood at the "gateways of commerce" and had the power to levy a toll on the passing traffic.[70] In *Trenton*

[69] 346 U. S. 485, 488 (1953).

[70] 94 U. S. 113, 131.

*Potteries, Inc.* v. *United States* Mr. Justice Stone insisted that the very power of the several companies in an industry to fix prices was enough to merit condemnation as unlawful, for the power to fix prices was the power to fix unreasonable prices.[71] In such an exercise of power a private interest, whether it be of capital or of labor, is irresponsible when it does not have to "answer in another place" for the way in which it has exercised its power. A judicial procedure which allows the contemnors to escape the consequence of their irresponsible exercise of power is tantamount to endowing a number of individuals rightly placed with authority to impose burdens upon commerce, to play favorites among competitors, and to hamper the progress of industry. The adage of Lord Acton, "All power corrupts, and absolute power corrupts absolutely," is applicable here.

## VII. THE DISPOSITION OF THE PETITION

At the end the argument turns back to its beginning. The judgments of contempt by the Chancellor were in strict accord with the law and the practice of the state, and imposed upon the contemnors the duty of obedience until the orders were set aside by appropriate process. In imposing these sentences, the Chancellor did no more than was proper and necessary to instrument, and to secure compliance with, his mandatory injunction. In its issue and its administration the mandate was severely limited to the objective it was intended to serve. Its narrow purpose was to secure to the respondents access to common carrier service on the same terms it was available to others. The injunction was not open to valid attack, and the Chancellor, acting only in instances in which the court was flouted, did only

[71] 273 U. S. 392, 397 (1927).

what was necessary to keep his decree from becoming a nullity.

### 1. Frailties of Petitioners' Case

The Petitioners do not deny their contempt or seriously challenge the validity of the injunction. Instead, they seek by judicial foray to put themselves outside of the Chancellor's jurisdiction. The crux of their argument is that steps taken by the Chancellor to make the decree effective, otherwise not subject to challenge, are invalid against them. They argue that their courses of conduct fall within a province of labor relations over which the Congress has endowed the Board with exclusive primary jurisdiction. Although the sections of the Act from which they seek to draw their immunity are concerned with the collective activities of labor unions directed at mutual self-help, in the Chancery Court each of the eighteen individual contemnors entered the plea that he acted as an individual and not under the auspices of Local No. 327.[72] In the face of such evidence, it cannot be "reasonably deemed" that the contemptuous acts involved the collective activity of a labor union. Although the motivation of the contemnors is obscure, there is not one bit of testimony in the record to indicate that its purpose was mutual self-help. Yet such an objective is a requisite to an invocation of the exclusive jurisdiction of the Board. The Petitioners failed to give to Industries and Radio the access to common carriage which in customary manner they were furnishing to other shippers. The law has

[72] The other two citations are against Teamsters Union No. 327 and Don Vestal, its president. In setting up the picket sign at the vehicular entrance to the plant, Vestal acted without authority from the local union. It is of note that this sign was withdrawn just before he had to answer to the charge of contempt in the Chancery Court.

taken from common carriers the power to discriminate among those who must have access to their services; it has refused to endow even a regulatory agency with such a power. Surely the mere fact of membership in a labor union cannot free the contemnors of a responsibility not to play favorites which as employees of common carriers and as citizens they cannot escape.

### 2. The Alternatives Before the Court

In accordance with its prevailing procedure, this Court may dispose of the petition before it in one of three distinct ways:

(1) It may—and it seems to us evident that it should—deny the writ. Access to common carriage and labor relations which promote harmony within the economy are alike subjects of public policy. Each has its own domain and neither is called upon to yield priority to the other. In our opinion, the current controversy lies clearly within the domain in which the law secures to all shippers equal access to transportation, and lies far outside the jurisdiction of the Board. There is nothing in the Act to indicate that the Congress conferred upon the Board the power to exercise a veto over the steps taken by a Chancery Court to make its mandate effective. The Chancery Court and the Board each has its jurisdiction in its appointed orbit, and we insist the two orbits do not overlap.

(2) It may grant the writ of certiorari here asked for. A postulate to such a decision is of necessity a recognition of an actual or potential overlap between the authority of the Chancery Court and the jurisdiction of the Board. If such an overlap, actual or potential, exists, very serious issues are raised. Here no help is to be had from the Petition; when exposed

within the context of the current controversy the abstract questions put by the contemnors rapidly disintegrate. But upon the hypothesis of an overlap a number of issues are presented. Included within these, but not limited to them, are the following:

(a) Whether the Act deprives a state court of power to effectuate a decree relating to the performance of common carriage duties by making the decree applicable to all those persons in strategic positions through whom the carrier necessarily acts.

(b) Whether the Act limits the power of the Court to secure compliance with its decree by giving immunity from contempt to employees of common carriers solely because of their membership in a labor union.

(c) Whether the Act grants to certain employees and union officials a privilege, not available to other citizens, to employ unlawful means to flout a state court decree rather than seek their remedies through appropriate judicial procedures.

(d) Whether the Act, if it be construed to limit the power of a state court to secure to business units their right to common carriage, involves a taking of property without due process of law.

But in whatever language they may be shaped, an overlap involves issues of greatest consequence. This case could be made to cut far deeper into the power of the state to shape and to administer its own system of justice than any case yet decided by this Court. In its disposition it carries a potential threat to the independence and sovereignty of state courts in the government of their own affairs.

(3) It may, without hearing and by summary judgment, reverse the decisions of the three courts below.

There can be no quarrel with the disposition of the *General Drivers* case on the authority of *Anheuser-Busch,* or of *Kerrigan* on the authority of these two cases, for the differences between the three cases were too small to invite separate judicial inquiries. But the gulf between this trilogy of cases, which safeguard the rights of employees acting in concert, and the instant case, whose concern is equality of access to common carriage, is too great to be bridged by citations from decisions focused upon labor relations. To decide the instant case by such a resort to *stare decisis* would be to resolve important questions without giving definite answers to the questions or even stating them.

## VIII. CONCLUSION

For the reasons stated, we submit that justice, sound judicial administration, and a respect for the federal system all support the conclusion that the proper disposition of this controversy is a denial of the petition asking for writs of certiorari.

Respectfully submitted,

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*Of Counsel:*

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## APPENDIX

TO THE CHANCELLORS OF THE CHANCERY COURT OF DAVIDSON COUNTY, AT NASHVILLE, TENNESSEE

Rule No. 75917

ALADDIN INDUSTRIES, INC., *Complainant,*

v.

ASSOCIATED TRANSPORT, INC., *Defendants.*

Filed February 8, 1955

I

The parties and their residences or places of business are as stated in the caption.

II

Complainant is an Illinois corporation qualified to do business in the State of Tennessee and is engaged in the manufacture of lamps and vacuum bottles. Complainant's plant and offices are located in the City of Nashville, Davidson County, Tennessee, at 705 Murfreesboro Road. The continuation of complainant's business is dependent to a large extent on the services of common carriers by truck in both interstate and intrastate commerce.

III

The defendants are corporations which own and operate truck lines in and out of the City of Nashville and are engaged in the business of transporting freight by motor vehicle for hire as common carriers in interstate commerce and in intrastate commerce.

The common law of the State of Tennessee imposes upon the defendants and each of them, as common carriers, the affirmative obligation to serve all members of the public, including complainant, without discrimination or prefer-

ence. Complainant alleges, on information and belief, that the employees of the defendants, so long as they remain such employees, are under a similar duty to serve the public without discrimination or preference.

IV

Beginning on February 3, 1955, and ever since said date, the defendants and each of them have discriminated against the complainant and have failed and refused wrongfully and unlawfully and without just excuse to handle freight shipped to or offered for shipment by the complainant. Defendant, Super Service Motor Freight Co., Inc., failed and refused on five separate occasions on February 3, 1955, and on three separate occasions on February 4, 1955, to pick up outbound shipments of freight from the complainant's said plant in Davidson County. Defendants, Associated Transport, Inc., and Wilson Truck Co., Inc., each failed and refused on February 3rd and on February 4th to pick up outbound shipments of freight at complainant's said plant. On Monday, February 7, 1955, defendant, Southeastern Motor Truck Lines, Inc., failed and refused to pick up outbound shipments of freight from the complainant's said plant and on the same day defendant, Hoover Motor Express Co., Inc., failed and refused to deliver freight to complainant's plant. Each such failure and refusal by a defendant to pick up freight was preceded by complainant's request to such defendant for carrier service over the established route and at the established rate of each carrier. Defendant, C & D Motor Delivery Company, on February 3, 1955, failed and refused to deliver one trailer load of vacuum bottle jackets from Robertson Can Co., Springfield, Ohio, to the complainant's said plant to which said bottles were consigned. Complainant alleges, on information and belief, that defendant Railway Express Agency, has on hand express consigned to the complainant's said plant in Nashville but has failed and refused to deliver same.

V

Complainant alleges, on information and belief, that the reason why the defendants have failed and refused to deliver shipments to or accept freight shipments from the complainant is that the employees of the defendants have refused to cross a picket line which has been stationed outside of the complainant's said plant at 705 Murfreesboro Road in the City of Nashville. Said pickets are not composed of complainant's employees, they are not making any demands of the complainant, and they are not engaged in any labor dispute with or involving the complainant. On information and belief, said pickets are employees or ex-employees of Aladdin Radio Industries, Inc., which is a different corporation engaged in a different business but which leases space at complainant's said plant. Said pickets are picketing Aladdin Radio Industries, Inc., in connection with an alleged labor dispute between said pickets and Aladdin Radio Industries, Inc. The employees of the complainant are at work and there is no labor dispute between the complainant and its employees. Complainant's employees have been regularly going to and from work and have been passing said pickets.

VI

Complainant avers, on information and belief, that said pickets in the vicinity of complainant's said plant do not furnish the defendants with a legal or sufficient excuse for failing and refusing to carry freight to or from the complainant's said plant.

VII

Complainant further alleges that the defendants and each of them, by reason of the facts stated above, are also violating their statutory duties as common carriers which require them to serve all members of the public without discrimination or preference. Said discrimination against

the complainant practiced by the defendants is made unlawful by Sections 5416 and 5418 of the Code of Tennessee and by Title 49, United States Code, Section 3 (1).

VIII

Complainant avers, on information and belief, that the defendants and each of them will continue their illegal refusal to serve the complainant as common carriers unless and until this Court enjoins them, their officers, agents, confederates and employees, to deliver freight shipments to and accept freight shipments from the complainant, as required by law, regardless of whether or not such deliveries will involve the crossing of picket lines.

IX

Complainant avers that by reason of said unlawful acts of the defendants and the threatened continuation of said unlawful acts, the complainant has suffered and will continue to suffer irreparable injury; that adequate damages would be difficult, if not impossible, to ascertain and collect; that the conduct of complainant's business has been seriously damaged and will be progressively and irreparably damaged by reason of the failure and refusal of the defendants to serve the complainant. Complainant avers that it has no adequate remedy at law and that a multitude of suits can be avoided and its business adequately protected only by injunctive action of this Court enjoining the illegal conduct of the defendants.

The Premises Considered, Complainant Prays:

1. That proper process issue requiring the defendants, and each of them, to answer this bill at an early rule date, but the oaths to their answers are expressly waived.

2. That upon such notice as the Court may deem proper, complainant be granted a temporary injunction enjoining the defendants, and each of them, and their officers, agents,

employees and all persons acting for or in concert with them, from failing or refusing to provide customary service to complainant under the legally established rates and rules applicable to such service, and in accordance with the customary manner in which such service was provided prior to February 3, 1955, that is, from failing or refusing to accept, handle, transport and deliver freight which the complainant or its agents tender to said respective defendants or freight tendered by others for transportation to complainant.

3. That the injunctive relief herein sought be made permanent at the hearing.

4. That the complainant have such other further and general relief as it may be entitled to in the premises.

THIS IS THE FIRST APPLICATION FOR A WRIT OF INJUNCTION IN THIS CAUSE.

ALADDIN INDUSTRIES, INC.

By J. A. BLAIR

WALLER, DAVIS & LANSDEN

By J. P. DAVIS

*Solicitors for Complainant*

To the Chancellors of the Chancery Court of Davidson County, at Nashville, Tennessee

Rule No. 76028

Aladdin Radio Industries, Inc., *Complainant,*

v.

Adkins Transfer Company, Inc., et al., *Defendants.*

Filed March 23, 1955

Complainant respectfully shows to the Court:

I

The parties and their residences or places of business are as stated in the caption.

II

Complainant is an Illinois corporation qualified to do business in the State of Tennessee and is engaged in the manufacture of component parts for electronic equipment. Complainant's plant and offices are leased from Aladdin Industries, Inc., a separate but affiliated corporation, and are located at 705 Murfreesboro Road, Davidson County, Tennessee. The continuation of complainant's business is dependent to a large extent on the services of common carriers by truck in both interstate and intrastate commerce.

III

The defendants are corporations which own and operate truck lines in and out of the City of Nashville and are engaged in the business of transporting freight by motor vehicle for hire as common carriers in interstate commerce and in intrastate commerce.

The common law of the State of Tennessee imposes upon the defendants and each of them, as common carriers,

the affirmative obligation to serve all members of the public, including complainant, without discrimination or preference. Complainant alleges, on information and belief, that the employees of the defendants, so long as they remain such employees, are under a similar duty to serve the public without discrimination or preference.

IV

Since the early part of February, 1955, the defendants and each of them have discriminated against the complainant and have failed and refused, wrongfully and without just cause, to handle freight shipped to or offered for shipment by the complainant. Defendant, Wilson Truck Co., Inc., has refused ever since February 25, 1955, to deliver to the complainant a shipment from Aluminum Goods Manufacturing Company, Manitowoc, Wisconsin, consigned to complainant. Defendant, Southeastern Motor Truck Lines, Inc., held a shipment consigned to the complainant from February 25th until March 4, 1955, and repeatedly failed and refused to deliver the same to the complainant's plant. The complainant finally took possession of this shipment. Defendant, St. Louis-Nashville Freight Lines, Inc., has held a shipment of freight consigned to the complainant and has failed and refused to deliver the same to the complainant since February 25, 1955. Said shipment is from Evansville Plating Co., Evansville, Indiana. Defendant, Adkins Transfer Company, Inc., failed and refused to deliver to the complainant a shipment from A. G. Bush Co., Chicago, Illinois, and there was a long delay before complainant finally obtained possession of the same. On March 21st defendant, Adkins Transfer Company, Inc., refused to deliver to the complainant a shipment from James Vibrapowr Co., Chicago, Illinois. On March 22nd the defendant, Hayes Freight Lines, Inc., refused to deliver to complainant a shipment from Motorola Co. of Chicago. Johnson Freight Lines, Inc., has in its possession and has failed and refused to

deliver to the complainant a shipment from Joseph T. Ryerson & Son, Cincinnati, Ohio, consigned to the complainant. Defendants, Silver Fleet Motor Express, Inc., B. & S. Motor Lines, Inc., Associated Transport, Inc., Roadway Express, Inc., and Super Service Motor Freight Co., Inc., have on one or more occasions refused to deliver to the complainant freight consigned to the complainant, but in each case, after considerable delay and inconvenience, the complainant has obtained possession of said shipments.

V

Complainant alleges on information and belief that the reason why the defendants have failed and refused to deliver shipments to or accept freight shipments from the complainant is that the employees of the defendants have refused to cross picket lines which have been stationed outside of complainant's said plant at 705 Murfreesboro Road in Davidson County, Tennessee.

VI

Complainant avers, on information and belief, that said pickets in the vicinity of complainant's said plant do not furnish the defendants with a legal or sufficient excuse for failing and refusing to carry freight to or from the complainant's said plant.

VII

Complainant further alleges that the defendants and each of them, by reason of the facts stated above, are also violating their statutory duties as common carriers which require them to serve all members of the public without discrimination or preference. Said discrimination against the complainant practiced by the defendants is made unlawful by Sections 5416 and 5418 of the Code of Tennessee and by Title 49, United States Code, Section 3 (1).

VIII

Complainant avers, on information and belief, that the defendants and each of them will continue their illegal refusal to serve the complainant as common carriers unless and until this Court enjoins them, their officers, agents, confederates and employees, to deliver freight shipments to and accept freight shipments from the complainant, as required by law, regardless of whether or not such deliveries will involve the crossing of picket lines.

IX

Complainant avers that by reason of said unlawful acts of the defendants and the threatened continuation of said unlawful acts, the complainant has suffered and will continue to suffer irreparable injury; that adequate damages would be difficult, if not impossible, to ascertain and collect; that the conduct of complainant's business has been seriously damaged and will be progressively and irreparably damaged by reason of the failure and refusal of the defendants to serve the complainant. Complainant avers that it has no adequate remedy at law and that a multitude of suits can be avoided and its business adequately protected only by injunctive action of this Court enjoining the illegal conduct of the defendants.

THE PREMISES CONSIDERED, COMPLAINANT PRAYS:

1. That proper process issue requiring the defendants, and each of them, to answer this bill at an early rule date, but the oaths to their answers are expressly waived.

2. That upon such notice as the Court may deem proper, complainant be granted a temporary injunction enjoining the defendants, and each of them, and their officers, agents, employees and all persons acting for or in concert with them, from failing or refusing to provide customary service to complainant under the legally established rates and rules applicable to such service, and in accordance with the

customary manner in which such service was provided prior to January 25, 1955, that is, from failing or refusing to accept, handle, transport and deliver freight which the complainant or its agents tender to said respective defendants or freight tendered by others for transportation to complainant.

3. That the injunctive relief herein sought be made permanent at the hearing.

4. That the complainant have such other further and general relief as it may be entitled to in the premises.

THIS IS THE FIRST APPLICATION FOR A WRIT OF INJUNCTION IN THIS CAUSE.

ALADDIN RADIO INDUSTRIES, INC.

By .....

WALLER, DAVIS & LANSDEN

By .....

*Solicitors for Complainant*